

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 348 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DAHYABHAI KALUBHAI SOLANKI

Versus

MANGAL TEXTILES

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Appearance:

MR HARESH J TRIVEDI for Petitioner  
PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 31/01/97

ORAL JUDGEMENT

This Criminal Revision Application at the instance of the Original Complainant Dahyabhai K. Solanki is directed against the impugned order of discharge dated 4th September, 1992 passed by the learned Chief Judicial Magistrate, Ahmedabad, rendered in Criminal Case No. 721 of 1989 wherein M/s. Mangal Textiles, Ahmedabad and six others who came to be tried for the alleged offence

punishable under Section 44 of the Water {Prevention & Control of Pollution} Act, 1974.

2. Heard Mr. H.J Trivedi, the learned advocate for the petitioner and Mr. U.A Trivedi, the learned APP appearing for the State.

3. On going through the impugned order, it appears that the learned Magistrate had discharged the accused on three grounds, they are - (i) the kerba in which the sample of the polluted water was taken was not sealed in the premises itself; as it is not reflected in the Inspection Report; (ii) The said sample though it was required to be sent directly to the Public Analyst does not appear to have been sent; and (iii) that Pradeep Gohil, Senior Scientific Officer had no authority to inspect the factory as the resolution empowering him to do the needful, names of the members are not stated.

4. Now none of the aforesaid grounds has any substance worth the name.

4.1 As regards the first ground, Mr. Trivedi, the learned advocate for the appellant has placed in my hands a certified copy of the evidence of Pradeep Kishoresinh Gohil, wherein in terms it is stated that Kerba was duly sealed and from writing, the same it clearly transpires that the Kerba in which the sample was taken was duly sealed in the premises itself, and accordingly, merely because the same was not referred in the Inspection Report that by itself is not sufficient to say that the sample was not sealed in the premises. In this view of the matter, the learned Judge having recorded the finding contrary to the evidence, this ground of discharge fails.

4.2 Turning to the second ground, it may be stated that the same has also no substance. After the sample is taken, the person taking the sample obviously goes to the Office and from there only, after preparing a forwarding letter, etc., the sample is sent to the Public Analyst. There is no provision of the law that the sample should be taken directly from the place where it was drawn. In this view of the matter, this ground of discharge also fails.

4.3 Turning to the third ground of discharge, merely because the names of the members of the Board are not shown in the Resolution dated 16th January, 1989, that by itself does not mean that he was not empowered. It appears that the learned Magistrate has overlooked this

most important aspect that the evidence which has come before him was for the limited purpose of framing the charges, and at this stage, he was not required to find out whether the same was sufficient or not for the purpose of recording conviction. If the material brought on the record prima facie brings home the offence against the accused then in that case, it was absolutely unbecoming on the part of the learned Magistrate to throw away the important matters, like the present one under the Pollution Act on any pretext.

4.4 In view of the aforesaid discussion, since the order of discharge is based on patently false and perverse ground, the same deserves to be quashed and set-aside.

5. This Court is indeed quite conscious of the fact that this matter is at the admission stage, and ordinarily when the order of discharge is required to be reversed, a notice is required to be issued to the respondent accused. But the notice to the respondents is dispensed with in view of the judgment of this Court rendered in case of Gujarat Pollution Control Board, Gandhinagar versus Rushab Industries, Ahmedabad, reported in 36 (1995) 1 GLR 1082.

6. This matter came up before this Court alongwith other matters wherein at the admission stage only they can be remanded without hearing the accused but for whatever reasons this matter was part-hard and was left out. In this regard, Mr. Trivedi, the learned advocate for the applicant has expressed his regret for not getting the matter immediately placed on the Board.

7. In the result, this Criminal Revision Application is allowed. The impugned order discharging the respondent-accused is hereby quashed and set-aside. This matter is remanded to the trial Court for framing the charge and to decide the same on merits, according to law. Taking into consideration the fact that the alleged offence is of the year 1989, the learned Chief Judicial Magistrate, Ahmedabad is directed to hear and decide this matter as expeditiously as possible, preferably on or before 31st December, 1997 and for this purpose, the complainant shall personally remain present before the Court and take the date and also take direct service of the summons to be served upon the respondents, and in the event of any difficulty in serving, he may take assistance of the police officer of the concerned Police Station.

A certified copy of the evidence of Pradeep,  
Public Analyst to be taken on record.

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Prakash\*